Hospital for treatment from pulmonary tuberculosis. That being so, his contract of insurance with the defendant company is voidable. It is trite law that a contract of insurance is a contract *uberrimae fidei* which can be avoided for non-disclosure of material facts. If any authority is required for this proposition it is to be found in the following passage in the judgment of Scrutton L.J. in *Rozanes* v. *Bowen* [1]:

"As the underwriter knows nothing and the man who comes to him to ask him to insure knows everything, it is the duty of the assured, the man who desires to have a policy, to make a full disclosure to the underwriters without being asked of all the material circumstances, because the underwriters know nothing and the assured knows everything. This is expressed by saying that it is a contract of the utmost good faith — *uberrima fides*."

In the circumstances I feel I have no option but to dismiss the action with costs, and make an order accordingly.

Although it is not necessary for me to decide on the rights of the plaintiff under the conditional assignment, I must say that in the light of the evidence of the widow of the deceased assured the defendants would not have succeeded in having the suit dismissed on this ground.

Action dismissed.

Solicitors: *Khoo Eng Chin & Co.; Lovelace & Hastings.*

AUGUSTINE v. PUBLIC PROSECUTOR

[A.Cr.J. (Ong J.) September 26, 1963]

[K.L. — Criminal Appeal No. 50 of 1963]

Criminal Procedure—Judgment—Duty of magistrate to give proper grounds—Duty to state findings of facts.

Except in the most straightforward type of cases, where the facts clearly establish all the necessary ingredients of an offence, it is the duty of the magistrate to state at least what were his finding of fact.

Case referred to:—

(1) *Oliver* v. *Ahsman* [1961] 3 W.L.R. 669, 682.

CRIMINAL APPEAL.

B. Kaher Singh for the appellant.

Gunn Chit Tuan (Deputy Public Prosecutor) for the respondent.

Ong J.: The appellant was charged in the Magistrate's Court, Kuala Lumpur under section 385 of the Penal Code, for putting one Tan Siew Hui in fear of hurt to his person on October 18, 1962 in order to the committing of extortion of an unspecified sum of money. On June 26, 1963 he was sentenced, upon conviction, to 6 months' imprisonment and one stroke of the rattan. He has now appealed against the conviction and sentence.

The grounds of judgment were given, after notice of appeal, on July 3, 1963 in four lines, as follows:

"The accused was charged with attempted extortion under section 385 Penal Code and after hearing all the evidence I found that there were clear evidence of an attempt which failed. Defence has not raised any doubts."

I do not consider the simple *ipse dixit* of the Magistrate sufficient to constitute proper grounds of judgment. It is not enough to use the words of Shelley, "I cannot argue, I can only feel," as the foundation of a judgment (see Holroyd Pearce L.J. in *Oliver* v. *Ashman* [1]). Except in the most straightforward type of cases, where the facts clearly establish all the necessary ingredients of an offence, it is the duty of the magistrate to state at least what were his findings of fact. The learned magistrate has failed to do anything of the sort, although he had had seven days in which to write his judgment and innumerable precedents exist showing what his predecessors had invariably done. Surely past magistrates were not indulging in literary compositions merely for the edification of judges and others for whom the grounds of judgment were written.

In this case, the appellant admitted that he had punched the complainant two days before the police report was made. Such being the case, there was good reason for the complainant having an *animus* against the appellant, and the events of November 1 and 2 leading up to the arrest were in truth more consistent with the appellant's innocence than his guilt of the allegations made against him.

For the above reason I am satisfied that the judgment was against the weight of evidence, and I therefore set aside the conviction and sentence.

Conviction and sentence set aside.

Solicitors: *Kaher Singh & Karam.*

THE PRUDENTIAL ASSURANCE CO. LTD. v. KOH NAM YONG

[D.C.A. (Buttrose, Chua & Kulasekaram JJ.) October 25, 1963]

[Singapore — District Court Appeal No. 31 of 1962]

Employment—Holidays—Work on—"Double the ordinary rate of salary"—Claims for—Clerks Employment Ordinance, 1957 ss.36(2) & 56—Scheme of Ordinance considered.

Under section 36(2) of the Clerks Employment Ordinance, 1957, any employee who is required to work on a holiday is entitled to double the ordinary rate of salary in addition to his salary.

Case referred to:—

(1) *Tara Singh* v. *Chairman, Sailors' Institute Committee, Singapore* [1959] M.L.J. 1.

DISTRICT COURT APPEAL.

Punch Coomaraswamy for the appellant.

David Marshall for the respondent.

Buttrose J.: This is an appeal from an Order of the Assistant Commissioner of Labour directing the appellant to pay to the Commissioner for Labour on behalf of the respondent

the sum of $28.48. The appeal, in the first instance, came before Winslow J. who after hearing argument referred it for the decision of a Court consisting of three Judges pursuant to the provisions of sub-section (2) of section 20 of the Courts Ordinance (Chapter 3).

The respondent who is a clerk employed by the appellant company submitted a claim to the Assistant Commissioner for Labour for the balance of statutory holiday pay for eleven hours work on two days under section 56 of the Clerks Employment Ordinance, 1957, (No. 14 of 1957) hereinafter referred to as 'the Ordinance'.

The position was that the respondent worked for six and a half hours on New Year's Day the 1st January 1962 and four and a half hours on Thaipusam Day the 22nd January 1962 both of which are paid holidays specified in Schedule A to the Ordinance. For these eleven hours work he was paid $30.26, that is, the single or ordinary rate in addition to his monthly salary. He maintained that he should be paid double the ordinary rate in addition to his salary and therefore claimed the balance of $30.26. The Assistant Commissioner for Labour found in favour of the respondent and ordered payment accordingly of the sum of $28.48. The difference between the amount claimed and the amount awarded being due to a miscalculation of the figures with which we are not concerned.

For the appellant it was contended that the Assistant Commissioner for Labour erred in law:—

(1) in holding that upon the true interpretation of section 36(2) of the Ordinance the respondent is entitled to double the ordinary rate of salary in addition to his salary if he is required to work on a statutory holiday;

(2) in wrongly applying the decision of the Court in the case of *Tara Singh* v. *Chairman, Sailors' Institute Committee, Singapore,*[1] to the claim; and

(3) in rejecting the recommendation contained in Article 30 of the Report by the Court of Inquiry into the dispute between the Singapore Traction Company Limited and its employees dated the 11th February, 1956, and set out in Sessional Paper No. S.L. 10 of 1956.

The substantial issue which arises for determination on this appeal turns on the construction of sub-section (2) of section 36 of the Ordinance which reads as follows:—

"36(2) Notwithstanding the provisions of the preceeding sub-section any employee may be required by his employer to work on any holiday to which he would otherwise be entitled under the said sub-section and in such event he shall be entitled to double the ordinary rate of salary for such day's work and to a travelling allowance, if payable to him under the terms of his agreement with his employer, for one day."

Sub-section (1) of section 36 provides, *inter alia,* that an employee shall be entitled to a paid holiday at his ordinary rate of salary on such of the days specified in Schedule A.

If therefore an employee works on a holiday he is entitled to double his ordinary rate of salary for such day's work. The employee's entitlement to double his ordinary rate of salary for working on a holiday is extraneous to and quite independent of his salary. It is an additional payment which by statute the employer is required to make for the work his employee does on that day and the sub-section quantifies it as being double the ordinary rate of the employee's salary. It is a statutory payment as distinct from a contractual one which is made in pursuance of the terms of the contract of service.

A consideration of the scheme of the Ordinance as a whole and in particular of Part IV thereof, I think, supports this construction.

This is a piece of social legislation for the protection of both employer and employee. Every employee is entitled under the Ordinance to one rest day a week which is normally on Sunday unless otherwise agreed. He cannot be compelled to work on that day. If however he desires to work on a rest day and the employer consents he may do so and for such day's work it is conceded that he must be paid at not less than double his ordinary rate of pay in addition to his salary.

If the appellant's contention is correct that the employee is only entitled to draw his single ordinary rate of pay in addition to his salary for working on a holiday, it would be anomalous that an employee compelled to work against his will on a holiday should receive less than the employee not under compulsion but willing to work on a rest day.

I find myself unable to draw any real distinction between Sundays and holidays save that work on holidays is compulsory if required by the employer whereas work on Sundays or rest days is voluntary and must be with the consent of the employer.

Similarly with regard to an employee who works overtime. It is conceded that for such overtime work he must be paid at the rate of not less than one and a half times his rate of pay in addition to his salary. It would, in my opinion, be incongruous for him to receive more than an employee compelled to return to work on a holiday against his will.

If an employer requires the attendance at work on a holiday of an employee he must pay for the privilege and in my judgment, upon the true construction of sub-section (2) of section 36 of the Ordinance, at double the ordinary rate of salary in addition to his salary.

There are two further matters to which I think I should briefly refer.

The case of *Tara Singh* v. *Chairman, Sailors' Institute Committee, Singapore, supra,* does not afford any real assistance in this case. All that Whyatt C.J. at page 1 of the report said was:— "The Labour Ordinance states clearly that a workman who works on these days" — (i.e.

Sundays and statutory holidays) — "shall be entitled to double his ordinary rate of pay...." which is a mere repetition of the words of the Ordinance.

Considerable importance was attached by the appellant to the recommendation of the Court of Inquiry into the dispute between the Singapore Traction Company Limited and its employees which reads as follows:—

"30. We recommend that work on any of the days specified in Schedule A to the Labour Ordinance should be paid for at double the ordinary rate of wages as provided in the Labour Ordinance, and we reject the Union's claim for double pay in addition to the wages paid in respect of the holiday."

This was not a judicial pronouncement on the construction of a particular provision in the Labour Ordinance but merely a recommendation by a Court of Inquiry which may have been influenced by various factors and we are unable to derive any assistance from it. I do not know whether the Court of Inquiry had the benefit which this Court has had of an exhaustive and critical examination of the relevant provisions of the legislation in question. If it was intended to be an authoritative statement as to the correct construction to be placed upon the section I have the misfortune, with the greatest respect, to disagree with it.

I think, perhaps, I should add that the appellant company has very properly brought this appeal in order to obtain a decision on what, in the circumstances of this case, is the correct amount to be paid and with no wish to evade legal liability.

For the reasons which I have already indicated the appeal fails and must be dismissed with costs.

Chua and **Kulasekaram JJ.** concurred.

Appeal dismissed.

Solicitors: *Braddell Bros.*; *David Marshall.*

PUBLIC PROSECUTOR v. SOO YOKE TECK

[A.Cr.J. (Ong J.) October 30, 1963]

[K.L. — Criminal Appeal No. 56 of 1963]

Road Traffic Ordinance, 1958, ss.120(2) and 138(3) —Overloading—Liability of servant—Punishment as deterrent.

Criminal Procedure—"Cautioned and discharged" —Criminal Procedure Code (Cap. 6), s.173A(ii)(a).

This was an appeal by the Public Prosecutor against an order by a magistrate under section 173A(ii)(a) of the Criminal Procedure Code against a lorry driver who had pleaded guilty to an offence under section 120(2) of the Road Traffic Ordinance. The learned magistrate had stated as his reason for proceeding under section 173A (ii)(a) that the vehicle owner had already been fined.

Held: by virtue of section 138(3) of the Road Traffic Ordinance the respondent as driver was liable to punishment no less than the owner of the vehicle though it did not follow that the punishment should be of the same severity as that imposed on the owner. The punishment must be sufficient to act as a deterrent.

Order of the learned magistrate set aside and a fine of $100 imposed in lieu thereof.

CRIMINAL APPEAL.

Hamzah bin Salleh (Deputy Public Prosecutor) for the appellant.

Lall Singh Muker for the respondent.

Ong J.: This is an appeal by the Public Prosecutor against an order by a Kuala Lumpur magistrate who had convicted the respondent lorry driver on his plea of guilty to an offence under section 120(2) of the Road Traffic Ordinance 1958 of overloading his vehicle with an excess weight of nearly 8 tons. In purported compliance with section 173A of the Criminal Procedure Code the learned magistrate "cautioned and discharged" the respondent. The Public Prosecutor appeals against the inadequacy of the sentence.

The learned magistrate in his grounds of judgment, states that he had made his order under section 173A(ii)(a) because the vehicle owner had already been fined. I am informed by the learned Deputy Public Prosecutor that the fine imposed on the owner had been $100, (which was manifestly inadequate) but it had been increased on appeal to $400.

The overloading which was considerable was clearly deliberate. The respondent as a servant was liable to punishment, no less than his employer, by virtue of section 138(3) of the Road Traffic Ordinance, 1958. It does not follow, however, that he ought to be fined the same amount as the vehicle owner. Allowing him to get off scot-free would be wrong in principle because he is not deterred from repeating the offence in future. Since the profit goes into the employer's pocket the vehicle owner must bear the brunt. In the circumstances, I think the proper sentence on the respondent should be a fine of $100 which should serve as a sufficient deterrent for a wage-earner. In case the vehicle owner should indemnify him, it is sufficient that this person had already paid a substantial fine as owner. I accordingly quash the order of the magistrate and in lieu thereof sentence the respondent to pay a fine of $100.

Order accordingly.

Solicitors: *Lovelace & Hastings.*

RE LIM YEW SIANG

[R.Cr.J. (Gill J.) November 11, 1963]

[K.L. — Criminal Revision No. 9 of 1963]

Criminal Procedure—Failure to appear on summons —Issue of warrant for arrest—Appearance on own volition—Magistrate dealing with charges in absence of prosecuting officer—Criminal Procedure Code (Cap.6), s.137.

The defendant was charged with failing to pay contributions under the Employees' Provident Fund Ordinance, 1951, and a warrant of arrest was issued against